

## § 1209.1

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AUTHORITY: 5 U.S.C. 554, 556, 557, and 701 *et seq.*; 12 U.S.C. 4501, 4503, 4511, 4513, 4513b, 4517, 4526, 4531, 4535, 4536, 4581, 4585, 4631–4641; and 28 U.S.C. 2461 note.

SOURCE: 76 FR 53607, Aug. 26, 2011, unless otherwise noted.

### **Subpart A—Scope and Authority**

#### **§ 1209.1 Scope.**

(a) *Authority.* This part sets forth the Rules of Practice and Procedure for hearings on the record in administrative enforcement proceedings in accordance with the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Title XIII of the Housing and Community Development Act of 1992, Public Law 102–550, sections 1301 *et seq.*, codified at 12 U.S.C. 4501 *et seq.*, as amended (the “Safety and Soundness Act”), as stated in § 1209.4 of this part.<sup>1</sup>

<sup>1</sup>As used in this part, the “Safety and Soundness Act” means the Federal Housing Enterprise Financial Safety and Soundness Act of 1992, as amended. See § 1209.3. The Safety and Soundness Act was amended by the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, sections 1101 *et seq.*, 122 Stat. 2654 (July 30, 2008) (HERA).

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(b) *Enforcement Proceedings.* Subpart B of this part (Enforcement Proceedings Under sections 1371 through 1379D of the Safety and Soundness Act) sets forth the statutory authority for enforcement proceedings under sections 1371 through 1379D of the Safety and Soundness Act (12 U.S.C. 4631 through 4641) (Enforcement Proceedings).

(c) *Rules of Practice and Procedure.* Subpart C of this part (Rules of Practice and Procedure) prescribes the general rules of practice and procedure applicable to adjudicatory proceedings that the Director is required by statute to conduct on the record after opportunity for a hearing under the Administrative Procedure Act, 5 U.S.C. 554, 556, and 557, under the following statutory provisions:

(1) Enforcement proceedings under sections 1371 through 1379D of the Safety and Soundness Act, as amended (12 U.S.C. 4631 through 4641);

(2) Removal, prohibition, and civil money penalty proceedings for violations of post-employment restrictions imposed by applicable law; and

(3) Proceedings under section 102 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a) to assess civil money penalties.

(d) *Representation and conduct.* Subpart D of this part (Parties and Representational Practice before the Federal Housing Finance Agency; Standards of Conduct) sets out the rules of representation and conduct that shall govern any appearance by any person, party, or representative of any person or party, before a presiding officer, the Director of FHFA, or a designated representative of the Director or FHFA staff, in any proceeding or matter pending before the Director.

(e) *Civil money penalty inflation adjustments.* Subpart E of this part (Civil Money Penalty Inflation Adjustments) sets out the requirements for the periodic adjustment of maximum civil money penalty amounts under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Inflation

Specifically, sections 1151 through 1158 of HERA amended sections 1371 through 1379D of the Safety and Soundness Act, (codified at 12 U.S.C. 4631 through 4641) (hereafter, “Enforcement Proceedings”).

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Adjustment Act) on a recurring four-year cycle.<sup>2</sup>

(f) *Informal proceedings.* Subpart F of this part (Suspension or Removal of an Entity-Affiliated Party Charged with Felony) sets out the scope and procedures for the suspension or removal of an entity-affiliated party charged with a felony under section 1377(h) of the Safety and Soundness Act (12 U.S.C. 4636a(h)), which provides for an informal hearing before the Director.

### § 1209.2 Rules of construction.

For purposes of this part:

(a) Any term in the singular includes the plural and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate; and

(c) Unless the context requires otherwise, a party's representative of record, if any, on behalf of that party, may take any action required to be taken by the party.

### § 1209.3 Definitions.

For purposes of this part, unless explicitly stated to the contrary:

*Adjudicatory proceeding* means a proceeding conducted pursuant to these rules, on the record, and leading to the formulation of a final order other than a regulation.

*Agency* has the meaning defined in section 1303(2) of the Safety and Soundness Act (12 U.S.C. 4502(2)).

*Associated with the regulated entity* means, for purposes of section 1379 of the Safety and Soundness Act (12 U.S.C. 4637), any direct or indirect involvement or participation in the conduct of operations or business affairs of a regulated entity, including engaging in activities related to the operations or management of, providing advice or services to, consulting or contracting with, serving as agent for, or in any other way affecting the operations or business affairs of a regulated entity—

with or without regard to—any direct or indirect payment, promise to make payment, or receipt of any compensation or thing of value, such as money, notes, stock, stock options, or other securities, or other benefit or remuneration of any kind, by or on behalf of the regulated entity, except any payment made pursuant to a retirement plan or deferred compensation plan, which is determined by the Director to be permissible under section 1318(e) of the Safety and Soundness Act (12 U.S.C. 4518(e)), or by reason of the death or disability of the party, in the form and manner commonly paid or provided to retirees of the regulated entity, unless such payment, compensation, or such benefit is promised or provided to or for the benefit of said party for the provision of services or other benefit to the regulated entity.

*Authorizing statutes* has the meaning defined in section 1303(3) of the Safety and Soundness Act (12 U.S.C. 4502(3)).

*Bank Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

*Board or Board of Directors* means the board of directors of any Enterprise or Federal Home Loan Bank (Bank), as provided for in the respective authorizing statutes.

*Decisional employee* means any member of the Director's or the presiding officer's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Director or the presiding officer, respectively, in preparing orders, recommended decisions, decisions, and other documents under subpart C of this part.

*Director* has the meaning defined in section 1303(9) of the Safety and Soundness Act (12 U.S.C. 4502(9)); except, as the context requires in this part, "director" may refer to a member of the Board of Directors or any Board committee of an Enterprise, a Federal Home Loan Bank, or the Office of Finance.

*Enterprise* has the meaning defined in section 1303(10) of the Safety and Soundness Act (12 U.S.C. 4502(10)).

*Entity-affiliated party* has the meaning defined in section 1303(11) of the Safety and Soundness Act (12 U.S.C. 4502(11)), and may include an executive

<sup>2</sup>Public Law 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Public Law 104-134, Title III, sec. 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321-373; Public Law 105-362, Title XIII, sec. 1301(a), Nov. 10, 1998, 112 Stat. 3293 (28 U.S.C. 2461 note).